

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Amendment of Part 90 of the)
Commission's Rules to Facilitate)
Future Development of SMR Systems)
in the 800 MHz Frequency Band)

PR Docket No. 93-144
RM-8117, RM-8030
RM-8029

Implementation of Sections 3(n) and 322)
of the Communications Act)
Regulatory Treatment of Mobile Services)

GN Docket No. 93-252

Implementation of Section 309(j))
of the Communications Act --)
Competitive Bidding)

PP Docket No. 93-253

To: The Commission

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PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Federal Communications Commission's (FCC) Rules, UTC, The Telecommunications Association (UTC),¹ respectfully requests reconsideration of the Commission's decision in the *First Report and Order (First R&O)* in the above-captioned proceeding, to reallocate the General Category channels in the 800 MHz band for the exclusive use of commercial mobile radio systems.²

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¹ UTC was formerly known as the Utilities Telecommunications Council.

² On February 16, 1996, the text of *First R&O* was published in the Federal Register.

UTC is the national representative on communications matters for the nation's electric, gas, and water utilities, and natural gas pipelines. Over 1,000 such entities are members of UTC, ranging in size from large combination electric-gas-water utilities which serve millions of customers, to smaller, rural electric cooperatives and water districts which serve only a few thousand customers each. Many utilities and pipelines operate sophisticated private land mobile communications systems in the 800 MHz band that make extensive use of the General Category channels. A reallocation of the General Category channels to the exclusive use of commercial systems will have a devastating impact on the operations of utilities and pipelines, as well as other public safety entities, that rely upon these channels in carrying out their public service obligations.

I. The FCC's Reallocation Of The General Category Channels Is Contrary To Public Interest

The *First R&O* is part of a series of on-going proceedings to establish service rules and auction procedures for the licensing of wide-area Specialized Mobile Radio (SMR) systems in the 800 MHz band. As part of this proceeding the Commission reallocated the 150 channels that comprise the General Category from their historic designation as frequencies that were available for licensing by both private and commercial radio systems to being exclusively available to SMRs. The Commission's decision to reallocate the General Category channels is not supported by the public record, is ill-advised and is contrary to the public interest.

Before the FCC's actions in this docket, private land mobile system licensees had access to 600 channels in the 800 MHz band; today, these entities have access to a total of 170 channels, and with restrictions on intercategory sharing, even fewer channels are available to any given applicant, depending on specific radio service eligibility.

Utilities and pipelines rely on private land mobile radio systems in the 800 MHz band to support critical public safety/public service functions. These systems are used to enhance coordinated responses to emergency situations such as power outages, natural gas leaks, nuclear warnings and natural disasters. As a general matter, utilities and pipelines request licensing in the Industrial/Land Transportation (I/LT) category at 800 MHz. However, I/LT channels are exhausted in many areas of the country due to the voracious channel appetite of speculative commercial radio operators. As a result many of these private system users have been forced to rely on the General Category channels in implementing their essential systems.

The Commission's decision to reallocate the General Category channels to SMR-only use is not supported by the underlying record in this proceeding. Indeed, in the *Further Notice of Proposed Rulemaking (FNPRM)* in which the FCC first raised the issue of a possible realignment of the General category channels, the Commission strongly suggested that it was inclined to restrict future SMR access to all or some of the General Category channels. The FCC stated:

Although we believe that SMR licensees with existing operations on the General Category or Pool Channels should be allowed to continue their

operations on such channels, we also believe that some restriction on future SMR applications on General Category and Pool Channels may be appropriate.³

The rationale behind the Commission's tentative conclusion to restrict future SMR access to the General Category channels was based on the FCC's earlier conclusion that this spectrum was not subject to competitive bidding. The FCC also found that continued access to this spectrum by SMRs could precipitate a "run" on this spectrum by speculators seeking to avoid auctions which would result in a scarcity of these channels for private mobile radio operators.⁴

In the span of the sixteen months since the adoption of the *FNPRM*, the FCC has dramatically reversed itself and adopted a position that is fundamentally at odds with these earlier conclusions. Instead of acting to ensure the continued access to the General Category channels by private mobile operators as originally proposed, the FCC has adopted an order that forecloses future access to this spectrum by essential public safety/public service entities. The Commission fails to provide a satisfactory explanation for this abrupt shift in attitude, and is instead rewarding the speculators for their manipulation of the FCC's processes.

The *First R&O* does not provide a detailed or reasoned basis to justify the FCC's wholesale reallocation of the General Category channels to commercial services. Instead,

³ *FNPRM*, PR Docket No. 93-144, 10 FCC Rcd 7970, 7999.

⁴ *FNPRM*, PR Docket No. 93-144, 10 FCC Rcd 7999.

the FCC relies on a facile count of license records to support its conclusion that “the demand for additional spectrum by SMR providers is significantly greater than the demand by non-SMRs.”⁵ Yet in the *FNPRM* the FCC characterized private land mobile usage of these channels as “extensive.”⁶ UTC estimates that the utility industry alone holds licenses for more than 7,000 frequency assignments nationwide in the General Category. This level of usage is significant by any measure.

More importantly, UTC disagrees with the assumption that channel counts are a fair indication of demand, or that channel counts are a proper means to balance the public interest in reallocating channels for speculative commercial use against the demonstrated need of public safety/public service users to meet their internal communications requirements. Comparing the number of commercial and non-commercial license grants in the General Category does not accurately depict demand but instead reflects the different licensing policies that the FCC has adopted for commercial systems compared to private systems. Under the liberal licensing policies that the FCC has had in place for commercial mobile radio operators, SMRs could request as many channels as they wanted on a speculative basis without regard to a demonstration of actual need. In contrast, private internal users such as utilities are required by FCC rules to justify the number of channels requested on the basis of near-term loading requirements. Given these two widely differing licensing policies it is axiomatic that FCC licensing records will indicate that

⁵ *First R&O and Eighth R&O*, para.137.

⁶ *FNPRM*, para. 52.

SMRs are licensed on more channels than private non-commercial users, but these records do not indicate actual demand or system usage, nor do license counts necessarily reflect the public interest in allocating additional spectrum for commercial use at the expense of public safety/public service.

Given the importance of the continued availability of these channels to the underlying mission of the nation's public service/public safety entities, it is wholly inappropriate to rely on a count of license records that are skewed by unbuilt, speculative SMR applications. Instead, the FCC should at least conduct an audit of the major urban areas to assess the nature of actual General Category usage. UTC strongly believes that such an investigation would reveal a much higher percentage of non-SMR usage of the General Category channels.⁷

The FCC's reliance on the comments of SMRs such as Nextel and OneComm to bolster its decision to reallocate the General Category is equally misplaced. For example, the FCC cites OneComm's statement regarding the size of the SMR waiting lists and application backlog as evidence that the demand for spectrum by SMR licensees is greater than non-SMR licensees.⁸ Contrary to OneComm's assertion, the size of the SMR waiting list and application backlog does not in any way demonstrate relative need for spectrum.

⁷ The Personal Communications Industry Association (PCIA) which represents many SMRs has indicated that it shares this belief, and has called for such a study. See comments of PCIA in response to the *Second Further Notice of Proposed Rulemaking*, PR Docket No. 93-144, page 17, filed February 15, 1996.

⁸ *First R&O*, para. 136.

In fact, these lists can just as accurately be said to be a reflection of the rampant SMR speculation that has occurred in the 800 MHz band.

The General Category was intended to serve as a “safety valve” for all radio services that would be available when channels could not be obtained in the applicant’s own category. Many utilities routinely require access to General Category channels because the frequencies in their own pool have been exhausted. Ironically, the lack of available channels in the private categories is often the result of speculative filings by SMRs in non-SMR categories through the use of the FCC’s intercategory sharing rules. Given the fact that it is the FCC’s past SMR licensing practices that has necessitated private licensees to resort to the General Category channels, it is particularly inequitable to now arbitrarily designate the General Category channels as exclusively “commercial” channels as this will deprive non-commercial licensees of an important resource in developing and maintaining their critical communications networks.

Finally, the FCC’s rationale that it needs to designate the General Category channels as SMR-only in order to provide a relocation home for incumbents in the upper portion of the 800 MHz band ignores the fact that not all of the incumbents that will need to be relocated are SMRs. There are a number of utilities, pipelines and other private users that are licensed in the upper 800 MHz channels and they too will need access to the General Category channels as a relocation home. Until the FCC identifies additional

spectrum to accommodate displaced private systems as well new private systems a reallocation of the General Category channels is ill-advised.

For all of the above reasons, the FCC should immediately reinstate non-SMR access to the General Category channels. The General Category should be available on a prospective basis for private land mobile radio licensees and SMR/non-SMR incumbents that are relocated from the upper 200 channels in the 800 MHz band. To the extent purely speculative applications by SMRs have effectively shut-down further licensing in the many areas of the country, UTC recommends that the FCC take actions to dismiss those applications. If such action is taken, the public interest will be served by making the General Category channels available for private licensees and relocated incumbents who truly need access to this spectrum.

II. The FCC Should Lift The Freeze On Intercategory Sharing Among Pool Eligibles

As part of this proceeding the FCC imposed a “freeze” on the acceptance of applications for intercategory sharing of frequencies allocated to the public safety, I/LT and Business services (the “Pool” channels).⁹ The rationale behind the freeze was to stem the increase in applications for intercategory sharing of public safety channels by I/LT and Business eligibles that was caused by the depletion of I/LT and Business frequencies by speculative SMR applications.

⁹ Order, DA 95-741, released April 5, 1995.

The FCC adopted a *First R&O* in this proceeding eliminating SMR access to the non-SMR pool channels over three months ago. In imposing the freeze the FCC indicated that the freeze on intercategory sharing was to be a temporary measure to maintain the *status quo* pending the resolution of the docket.¹⁰ Accordingly, the FCC should lift the freeze on intercategory sharing by non-SMRs immediately. Continued imposition of the freeze is unacceptable to utilities and pipelines that must move forward with the development of their radio systems to meet their current communications requirements.

III. Conclusion

Many utilities, pipelines, and other public safety/public service providers are licensed to operate sophisticated land mobile radio systems in the 800 MHz band. Before the Commission's actions in this docket, these private system licensees had access to 600 channels in the 800 MHz band; today, these entities have access to a total of 170 channels, and with restrictions on intercategory sharing, even fewer channels are available to any given applicant, depending on specific radio service eligibility.

The FCC's decision to reallocate the General Category channels is not supported by the public record, is ill-advised and contrary to the public interest. The *First R&O* does not provide a detailed or reasoned basis to justify the FCC's the wholesale reallocation of the General Category channels to commercial services. The FCC should immediately reinstate non-SMR access to the General Category channels.

¹⁰ See Commission *Memorandum Opinion and Order*, DA 95-1669, released July 28, 1995, denying UTC petition to lift freeze.

WHEREFORE, THE PREMISES CONSIDERED, UTC requests the Federal Communications Commission to take action in accordance with the views expressed in this petition.

Respectfully submitted,

UTC

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Dated: March 18, 1996

CERTIFICATE OF SERVICE

I, John Lanou, legal assistant of UTC, The Telecommunications Association, hereby certify that I have caused to be sent, by hand-delivery, on this Monday, March 18, 1996, a copy of the foregoing to each of the following:

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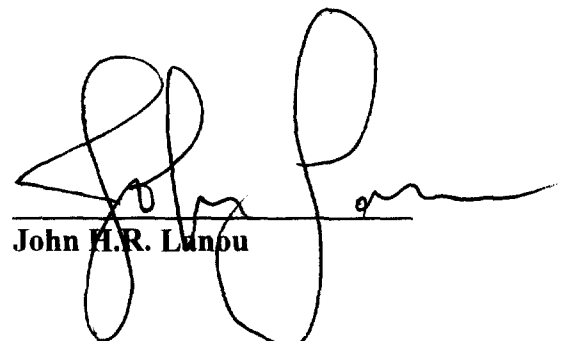
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